

1 C. THERE ARE SUBSTANTIAL INDICIA THAT THE PLAINTIFFS'
2 LATEST REQUEST FOR HASTE IS PART OF A PATTERN OF
3 GAMESMANSHIP AIMED AT DENYING THE DEFENDANTS REASONABLE
4 OPPORTUNITY TO PREPARE.

5 Evidence has steadily accumulated which supports a
6 substantial inference that the plaintiffs' latest request to rush
7 the litigation wholly on their terms as to timing is pure
8 gamesmanship, aimed at frustrating reasonable preparation by the
9 defendants. Such evidence includes:

10 1) In a letter to the Court dated and hand-delivered on
11 May 15, 1996 -- after the Court's TRO denials had been issued --
12 AT&T's counsel asked the Court to advance the July 2nd
13 preliminary injunction hearing date by three weeks to June 10.
14 The letter request, expressly made on behalf of all three
15 plaintiffs, stated that:

16 "Plaintiffs would be prepared to file their papers
17 before May 28, 1996, the date presently set by the
18 Court, and request a hearing date, if possible, the
19 week of June 10, 1996."⁵

20 No mention of an "urgent need" or any other need for discovery
21 was mentioned in the plaintiffs' May 15th letter requesting the
22 accelerated hearing date [See Exhibit B]. This discrepancy in
23 the plaintiffs' collective about-face within one week is
24 unexplained in their latest papers;

25 ⁵ Plaintiffs' May 15th letter to the Court is appended as
26 Exhibit B. It was hand-delivered to the Court, as stated, but
27 not forwarded to the defendants until May 16, as the fax trailer
28 thereon shows. The defendants did not respond thereto in view of
our understanding that the Court does not entertain letter
requests for rulings.

1 2) Pursuant to their proposed ex parte order for their
2 current motion, the plaintiffs are asking the Court, without
3 acknowledgment, to cut a week out of the preparation time granted
4 to the defendants in the Court's scheduling order of May 15.
5 Thus, again, a tactic of attempting to shorten the defendants'
6 preparation time is being used -- as it was with the sneak TRO
7 attack, with the current ex parte motion, and with the
8 plaintiffs' proposed order for expedited discovery, including a
9 24 hour turnaround time on any document subpoenaed;

10 3) The plaintiffs made their ex parte motion late on
11 Tuesday, May 21, even though all parties have known of the
12 briefing schedule since May 14, when the Court gave telephone
13 notice of the denials of the TRO requests. In short, the
14 plaintiffs have consumed a full week of the briefing schedule to
15 strategize their way towards seeking emergency discovery -- and
16 are asking that the elapsed time be subtracted from the
17 defendants' briefing period and reallocated to the plaintiffs for
18 expedited discovery. Such a result would penalize the defendants
19 and reward the plaintiffs for their untimeliness;

20 4) The plaintiffs' timing for their current motion is
21 further suspect when it is made known that literally -- within
22 the very first hour on May 14 following the Court's telephoned
23 notice of the denial of the TRO's -- the plaintiffs hand-served
24 the defendants with Rule 34 document requests, interrogatories
25 and requests for admissions. All of their discovery initiatives
26 are and were premature under every applicable discovery rule; and
27 all were accompanied by warnings that the plaintiffs wanted
28 prompt oral depositions too on an accelerated basis. The

1 plaintiffs necessarily had prepared their overbearing discovery
2 requests before May 14. Thus, again, the plaintiffs showed a
3 manipulative sense of timing, which could not help but frustrate
4 the defendants' efforts to prepare themselves for the litigation;
5 5) Gaming is also present insofar as the plaintiffs imply
6 that the "Meet and Confer" rules were honored as to their current
7 motion. The litigants did meet and confer on Thursday, May 16.
8 But that meeting dealt with the written discovery requests served
9 on the defendants shortly after the denial of the TRO rulings
10 including, among others, the above-mentioned Rule 34 document
11 requests, requests for admissions, interrogatories and proposed
12 depositions. At that time, only plaintiff Sprint identified
13 specific persons -- three persons involved with the billing
14 agreements between the parties -- whom it wished to depose. No
15 plaintiff mentioned as many as "ten" depositions or that each
16 plaintiff wanted the power to subpoena documents on a 24-hour
17 compliance schedule [See accompanying Declaration of Bobby C.
18 Lawyer, filed herewith]. It is hard to discern whether the
19 plaintiffs' current discovery proposals are less onerous or more
20 onerous -- it is clearly very different from the proposals
21 discussed during the meet and confer session. In any event, both
22 of the proposals were and are unreasonable, unnecessary and,
23 particularly, untimely.

24 From the five foregoing events, which occurred within a mere
25 ten days, it can and should be concluded that the plaintiffs
26 request for expedited discovery is pure gamesmanship which should
27 not be further indulged.

28 ///

1 D. PLAINTIFFS' REQUEST FOR "LIMITED" DISCOVERY IS
2 EFFECTIVELY OPEN-ENDED AS TO BOTH DEPOSITIONS AND
3 DOCUMENTS

4 The plaintiffs Notice and Ex Parte Application (at page 2,
5 lines 9-21) assert that they seek expedited discovery "...limited
6 to the issues raised [by] the requests for a preliminary
7 injunction." Such a broad, generic statement is meaningless.

8 Nowhere in their moving papers have the plaintiffs
9 endeavored to explain just what issues, in their view, relate
10 peculiarly to the preliminary injunction issues; or what
11 categories of documents, employees or putative facts particularly
12 bear on such issues. Rather, they simply promise in conclusory
13 words to "limit" the proposed expedited discovery -- but, still,
14 they want special subpoena powers and prompt access to a
15 Magistrate Judge to babysit their discovery. No litigant should
16 get the kind of special treatment being requested under
17 circumstances similar to those present here.

18 E. THE DEFENDANTS WILL SUSTAIN UNREASONABLE HARDSHIPS IF
19 EXPEDITED DISCOVERY IS GRANTED, WHEREAS THE PLAINTIFFS'
20 RIGHTS WILL REMAIN INTACT IF EARLY DISCOVERY IS DENIED

21 Finally, we ask the Court to consider a "balance of
22 hardships" analogy. The hardships to the plaintiffs if they do
23 not get expedited discovery are not discernible. Failing to get
24 undeserved extraordinary relief does not qualify as a "hardship."
25 They can file a preliminary injunction request again if they
26 think they have sufficient evidence therefor. Moreover, the case
27 can and probably will proceed quickly to normal discovery; and,
28 if the past two weeks are any guide, the pace will be pretty
fast.

1 By contrast, the hardships on the defense of ordering
2 expedited discovery will be multiple, in that:

3 (1) The defense's right to a reasonable opportunity to
4 prepare its defense will be reduced to an abstraction. The case
5 is barely two weeks old. Within those two weeks, the defense has
6 had to respond to the surprise TRO attack by AT&T, MCI and
7 Sprint; respond to their expedited discovery motion; and
8 participate in two Meet & Confer sessions necessitated by the TRO
9 and expedited discovery motions -- with all of the time-consuming
10 administrative tasks related thereto. It will be even harder to
11 prepare a defense if the preparation time is further abridged
12 with expedited discovery.

13 (2) If permitted, the plaintiffs' proposed expedited
14 discovery schedule will be brutal and brutalizing-- but only to
15 the defense. Among other things,

16 (a) The plaintiffs propose up to ten half-day
17 depositions-- which may mean anything from 40, 50 or 60 or so
18 hours of depositions in one week. Any number of deposition hours
19 within that range-- witness location and scheduling aside-- will
20 make a joke of the defense's right to prepare.

21 (b) They propose that each plaintiff be gifted with
22 special subpoena power to compel production within 24 hours of
23 every document which any plaintiff wants. As stated above, 24-
24 hours effectively means 8 or 9 hours, considering that documents
25 -- and lawyers can define "documents" in very expansive ways --
26 would have to be located by regular employees who are familiar
27 therewith. Document searches within large businesses tend to be
28 labor-intensive under the best of circumstances. Risks of

1 creating predicates for contempt -- in view of the proposed
2 special subpoena request -- will be an omnipresent danger and
3 threat, if the plaintiffs' application is granted; and

4 (c) By far, the larger share of the burdens of
5 expedited discovery will fall on the defense, who will be
6 conscripted into all of the searching for and producing of
7 witnesses and documents, while the plaintiffs' three teams of
8 attorneys will be able to do tag-team questioning and unfettered
9 document demands, backed by subpoena authority.

10 The history of discovery is a history of abuse. The
11 plaintiffs' approach to date strongly suggests that the abusive
12 mind set is alive and well in this case.

13 IV. CONCLUSION

14 The plaintiffs have either lost perspective and/or are
15 simply gaming the process at an important time of preparation for
16 the defense. This is a case about the use of the lump sum
17 information on telephone customers' bills -- a sum compiled by
18 Pacific Bell and forwarded to the customers for payment. The
19 case is not and will never be about the sky falling, as might be
20 inferred by the plaintiffs' behavior. If, as the plaintiffs
21 inevitably concede, they do not have the evidence for a
22 successful preliminary injunction motion, they should withdraw

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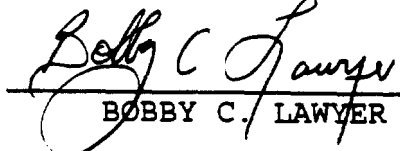
1 their motions. Failing that, the motions for modifying the
2 Court's scheduling order and for expedited discovery should be
3 summarily denied.

4
5 May 23, 1996

6
7 Respectfully submitted,

8 PACIFIC TELESIS LEGAL GROUP
9 BOBBY C. LAWYER
10 WALID S. ABDUL-RAHIM

11 By:


BOBBY C. LAWYER

12 Attorneys for Defendants
13 PACIFIC BELL, PACIFIC TELESIS
14 GROUP, PACIFIC BELL EXTRAS and
15 PACIFIC BELL COMMUNICATIONS
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1 PROOF OF SERVICE BY MAIL

2 Re: AT&T COMMUNICATIONS OF CALIFORNIA, INC., ET AL. V. PACIFIC
3 BELL, PACIFIC TELESIS GROUP, ET AL.

4 United States District Court, Northern District of
California - Oakland Division

5 Action No.: C-96-1691 and C-96-1692 SBA

6 I, JENNIFER S. NEWMAN, declare that:

7 I am over the age of eighteen years, not a party to the
8 within action, and employed in the City and County of
9 San Francisco, California. My business address is Pacific
10 Telesis Legal Group, 140 New Montgomery Street, Room 1021,
11 San Francisco, California 94105.

12 I am readily familiar with our practice for collection
13 and processing of correspondence and documents for mailing.
14 Under that practice, in the ordinary course of business,
15 correspondence and documents are deposited, postage fully
16 prepaid, with the United States Postal Service on the same day
17 they are collected and processed.

18 On the date specified below, I served the foregoing
19 **DEFENDANTS' OPPOSITION TO PLAINTIFFS' NOTICE AND EX PARTE**
20 **APPLICATION FOR EXPEDITED DISCOVERY AND MODIFICATION OF THE**
21 **COURT'S BRIEFING ORDER; [PROPOSED] ORDER DENYING EX PARTE**
22 **APPLICATION FOR ORDER PERMITTING EXPEDITED DISCOVERY AND**
23 **MODIFICATION OF BRIEFING SCHEDULE; AND DECLARATION OF BOBBY C.**
24 **LAWYER IN SUPPORT OF** on the person(s) listed below by placing a
25 true copy thereof enclosed in a sealed envelope with postage
26 thereon fully prepaid, in the United States mail at
27 San Francisco, California, in accordance with our ordinary
28 practices, addressed as follows:

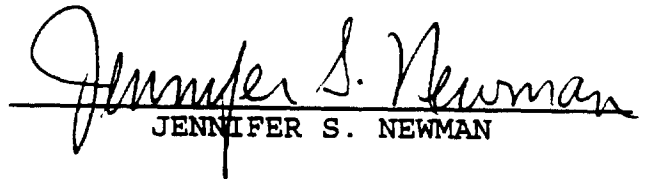
1
2 McCUTCHEN, DOYLE, BROWN & ENERSEN, LLP
3 TERRY J. HOULIHAN
4 REBECCA A LENABURG
5 STEPHANIE SIMONDS LAMARRE
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11 LEBOEUF, LAMB, GREENE & MACRAE, L.L.P.
12 R. SCOTT PUDDY
13 THOMAS E. McDONALD
14 One Embarcadero Center, 4th Floor
15 San Francisco, CA 94111

16
17 GEORGE S. DUESDIEKER
18 DARREN S. WEINGARD
19 SPRINT LAW DEPARTMENT
20 1850 Gateway Drive, 4th Floor
21 San Mateo, CA 94404-2467

22
23 I declare under penalty of perjury under the laws of
24 the United States of America that the foregoing is true and
25 correct.

26 DATED: May 23, 1996

27
28

JENNIFER S. NEWMAN

ORIGINAL
FILED

MAY 15 1996

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

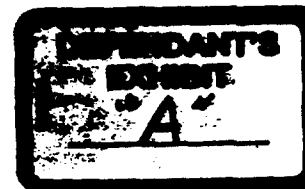
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AT&T COMMUNICATIONS, et al.,)	No. C 96-1691 SBA
)	
Plaintiffs,)	<u>ORDER DENYING</u>
)	<u>APPLICATION FOR</u>
vs.)	<u>TEMPORARY</u>
)	<u>RESTRAINING ORDER</u>
PACIFIC BELL, et al.,)	<u>AND SETTING BRIEFING</u>
)	<u>SCHEDULE FOR</u>
Defendants.)	<u>PRELIMINARY</u>
)	<u>INJUNCTION</u>

Plaintiffs have filed an application for Temporary Restraining Order ("TRO") and request for an order to show cause regarding a preliminary injunction.

Federal Rule of Civil Procedure 65(b) provides the district court with the authority to enter a TRO. The Court may grant such injunctive relief where the movant demonstrates either "(1) a likelihood of success on the merits and the possibility of irreparable injury, or (2) the existence of serious questions going to the merits and the balance of hardships tipping in [its] favor." Gilder v. PGA Tour, Inc., 936 F.2d 417, 422 (9th Cir. 1991).

The Court has considered the papers submitted in connection with this TRO request, including an opposition by the defendants, and plaintiffs' reply. The Court finds that plaintiffs have not demonstrated that the extraordinary remedy of a TRO is warranted. The Court finds that while plaintiffs



1 have demonstrated that defendants' conduct may subject them to
2 some injury, they have not demonstrated that the injury is
3 imminent or presently occurring. Plaintiffs' arguments focus
4 on their belief that defendants intend to provide information
5 to an affiliate of defendants who will, in the future, be
6 competing with plaintiffs. Plaintiffs have not, however, made
7 any showing that this conduct is imminent. Nor have
8 plaintiffs made an adequate showing that the alleged injuries
9 are irreparable.

10 Further, plaintiffs have not demonstrated a likelihood of
11 success on the merits. Many of the issues in this case
12 involve first impression interpretations of the
13 Telecommunications Act of 1996, 42 U.S.C. § 222. Nor have
14 plaintiffs demonstrated that the balance of hardships favors
15 granting a TRO.

16 The Court therefore finds that a TRO is not warranted.
17 Instead, the Court will set a briefing schedule for a hearing
18 on plaintiffs' request for a preliminary injunction, in order
19 to allow the parties to fully brief the request for injunctive
20 relief pending resolution of this action. Accordingly,

21 IT IS HEREBY ORDERED THAT the plaintiffs' application for
22 a TRO is DENIED.

23 IT IS FURTHER ORDERED THAT a hearing on plaintiffs'
24 motion ~~for~~ preliminary injunction shall be held on July 2,
25 1996.

26 / / / /

27 / / / /

28 / / / /

IT IS FURTHER ORDERED THAT plaintiffs shall file and
1 serve a memorandum of points and authorities in support of
2 their request for a preliminary injunction by no later than
3 May 28, 1996.

4 IT IS FURTHER ORDERED THAT defendants shall file and
5 serve their opposition by no later than June 18, 1996.

6 IT IS FURTHER ORDERED THAT plaintiffs shall file and
7 serve their reply by no later than June 25, 1996.

8 IT IS SO ORDERED.

9 Dated: May 14, 1996

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11 
12 SAUNDRA BROWN ARMSTRONG
13 United States District Judge
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MCCUTCHEN, DOYLE, BROWN & ENERSEN, LLP

May 15, 1996

Direct: (415) 393-2562

rienaburg@mdbe.com

HAND DELIVERY

The Hon. Sandra Brown Armstrong
United States District Court
Oakland Office
1301 Clay Street, Room 400 South
Oakland, California 94612

AT&T, et al. v. Pacific Bell, et al.
No. C 96 1691 SBA
Related Case No. C 96 1692 FMS

Dear Judge Armstrong:

I write on behalf of plaintiffs AT&T, MCI, and Sprint to respectfully request that plaintiffs' motion on preliminary injunction be heard prior to July 2, 1996.

Pacific stated in its opposition papers that the Pacific Bell Awards Program would award points based on a total amount that included monthly long distance charges that Pacific has access to solely on the basis of the contractual billing and collection services it provides, and asserted that "bonus points are already being earned by customers who have signed up." Defendant's Memorandum of Points and Authorities in Opposition to Temporary Restraining Order, 6:11-12. As addressed in plaintiffs' opening and reply information, such use and disclosure of plaintiffs' information violates the Billing Agreements Pacific has with each plaintiff, and constitutes a misappropriation of plaintiffs' trade secrets.

By Pacific's own statements, this use is occurring now and will continue to occur. Once plaintiffs' information, which Pacific has agreed to hold in confidence according to the contracts, is used or disclosed for purposes outside the contracts, the value of the information to plaintiffs dissipates, and cannot be replaced. Accordingly, plaintiffs wish to have this matter resolved as soon as possible, and respectfully request that the Court set an expedited briefing and hearing schedule.

ATTORNEYS AT LAW

Three Embarcadero Center
San Francisco, California 94111-4000
Tel. (415) 393-2000 Fax (415) 393-2288
<http://www.mccutchen.com>

San Francisco
Los Angeles
San Jose
Walnut Creek

Washington, D.C.
Taipei

NO. 1692 FMS

MCCUTCHEN ETAL SF242

6:15AM

MAY 16 1996

The Hon. Sandra B. n Armstrong

May 15, 1996

Page 2

Plaintiffs would be prepared to file their papers before May 28, 1996, the date presently set by the Court, and request a hearing date, if possible, the week of June 10, 1996.

Thank you for your consideration of this matter.

Sincerely yours,

Rebecca A. Lenaburg
Rebecca A. Lenaburg

cc: Michael von Loewenfeldt (via Hand Delivery)
R. Scott Puddy (via facsimile)
George S. Duesdieker (via facsimile)
Bobby C. Lawyer (via facsimile)

COPY

1 PACIFIC TELESIS LEGAL GROUP
BOBBY C. LAWYER (115017)
2 WALID S. ABDUL-RAHIM (141940)
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3 San Francisco, California 94105
Telephone: (415) 542-2182 (& -2551)
4 Facsimile: (415) 882-4458

5 Attorneys for Defendants
PACIFIC BELL, PACIFIC TELESIS GROUP,
6 PACIFIC BELL EXTRAS, and
PACIFIC BELL COMMUNICATIONS
7

ORIGINAL
FILED

MAY 23 1996

RICHARD W. ARMSTRONG
JUDGE
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION
10

11 AT&T COMMUNICATIONS, and MCI)	No. C 96-1691 SBA
TELECOMMUNICATIONS,)	No. C 96-1692 SBA
12)	
Plaintiffs,)	
13)	
vs.)	DECLARATION OF BOBBY C. LAWYER
14)	IN SUPPORT OF DEFENDANTS'
PACIFIC BELL, et al.,)	OPPOSITION TO PLAINTIFFS' EX
15)	PARTE APPLICATION FOR EXPEDITED
Defendants.)	DISCOVERY AND MODIFICATION OF
16)	<u>THE COURT'S BRIEFING ORDER</u>
17)	
SPRINT COMMUNICATIONS,)	
18)	DATE: To Be Scheduled
Plaintiff,)	
19)	TIME: To Be Scheduled
vs.)	
20)	PLACE: Judge Armstrong's
PACIFIC BELL, et al.,)	Courtroom
21)	
Defendants.)	
22)	

23 I BOBBY C. LAWYER, declare:
24

25 1. I am one of the attorneys for the defendants in the
26 above-captioned case. I make this declaration in support of
27 defendants Pacific Bell, Pacific Telesis Group, Pacific Bell

28 1. B.C. Lawyer's Declaration in support
of defendants' Oppos. Brief to
Plaintiffs' Mtn. for Expedited
Discovery - C96-1691 & 1692 SBA

1 Extras and Pacific Bell Communications' opposition to AT&T's,
2 MCI's and Sprint's application for expedited discovery. I have
3 personal knowledge of the facts stated in this declaration.

4 2. The defendants have received at least the following
5 discovery requests to date from the plaintiffs, on the dates
6 stated:

7 a.) Sprint: May 14, 1996 Faxed - Plaintiff's First Set of
8 Interrogatories to Defendants;

9 b.) Sprint: May 14, 1996 Faxed - Plaintiff's First Set of
10 Requests for Admissions to Defendants;

11 c.) Sprint: May 14, 1996 Faxed - Plaintiff's First Set of
12 Requests for Production of Documents to Defendants;

13 d.) ATT/MCI: May 15, 1996 Messengered - letter from
14 McCutchen's Office requesting limited discovery;

15 e.) ATT/MCI: May 15, 1996 Messengered - Plaintiffs' First
16 Set of Interrogatories to Defendants;

17 f.) ATT/MCI: May 15, 1996 Messengered - Plaintiffs' First
18 Set of Request for Production of Documents to Defendants;

19 g. Sprint: May 17, 1996 Messengered - First Set of
20 Admissions to Defendants.

21 3. A Meet and Confer Conference about possible expedited
22 discovery was held on May 16 with the plaintiffs' counsel. In
23 part, the proposed discovery encompassed within the above-
24 identified documents was discussed.

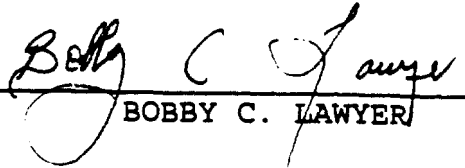
25 4. No discussion was held as to the discovery being
26 requested in the plaintiffs' current ex parte application for
27

28 2. B.C. Lawyer's Declaration in support
of defendants' Oppos. Brief to
Plaintiffs' Mtn. for Expedited
Discovery - C96-1691 & 1692 SBA

1 expedited discovery.

2 I declare under penalty of perjury under the laws of
3 the United States of America that the foregoing is true and
4 correct.

5 DATED: May 23, 1996

6 
7 BOBBY C. LAWYER
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B.C. Lawyer's Declaration in support
of defendants' Oppos. Brief to
Plaintiffs' Mtn. for Expedited
Discovery - C96-1691 & 1692 SBA

1 PROOF OF SERVICE BY MAIL

2 Re: AT&T COMMUNICATIONS OF CALIFORNIA, INC., ET AL. V. PACIFIC
3 BELL, PACIFIC TELESIS GROUP, ET AL. and related action.
4 U.S.D.C., No. Dist. - Oak. Div., Action Nos.: C-96-1691
5 SBA/C-96-1692 SBA

6 I, JENNIFER S. NEWMAN, declare that:

7 I am over the age of eighteen years, not a party to the
8 within action, and employed in the City and County of
9 San Francisco, California. My business address is Pacific
10 Telesis Legal Group, 140 New Montgomery Street, Room 1021,
11 San Francisco, California 94105.

12 I am readily familiar with our practice for collection
13 and processing of correspondence and documents for mailing.
14 Under that practice, in the ordinary course of business,
15 correspondence and documents are deposited, postage fully
16 prepaid, with the United States Postal Service on the same day
17 they are collected and processed.

18 On the date specified below, I served the foregoing
19 **DECLARATION OF BOBBY C. LAWYER IN SUPPORT OF DEFENDANTS'**
20 **OPPOSITION TO PLAINTIFFS' EX PARTE APPLICATION FOR EXPEDITED**
21 **DISCOVERY AND MODIFICATION OF THE COURT'S BRIEFING ORDER** on the
22 person(s) listed below by placing a true copy thereof enclosed in
23 a sealed envelope with postage thereon fully prepaid, in the
24 United States mail at San Francisco, California, in accordance
25 with our ordinary practices, addressed as follows:

26
27
28 4. B.C. Lawyer's Declaration in support
of defendants' Oppos. Brief to
Plaintiffs' Mtn. for Expedited
Discovery - C96-1691 & 1692 SBA

1 McCUTCHEN, DOYLE, BROWN & ENERSEN, LLP
2 TERRY J. HOULIHAN
3 REBECCA A LENABURG
4 STEPHANIE SIMONDS LAMARRE
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9 LEBOEUF, LAMB, GREENE & MACRAE, L.L.P.
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12 One Embarcadero Center, 4th Floor
13 San Francisco, CA 94111

14 GEORGE S. DUESDIEKER
15 DARREN S. WEINGARD
16 SPRINT LAW DEPARTMENT
17 1850 Gateway Drive, 4th Floor
18 San Mateo, CA 94404-2467

19 I declare under penalty of perjury under the laws of
20 the United States of America that the foregoing is true and
21 correct.

22 DATED: May 23, 1996

23 
24 JENNIFER S. NEWMAN

COPY

1 PACIFIC TELESIS LEGAL GROUP
BOBBY C. LAWYER (115017)
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ORIGINAL
FILED

MAY 28 1996

5 Attorneys for Defendants
PACIFIC BELL, PACIFIC TELESIS GROUP,
6 PACIFIC BELL EXTRAS and
PACIFIC BELL COMMUNICATIONS

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

10

11 SPRINT COMMUNICATIONS COMPANY) CASE NO. C 96-1692 SBA
L.P., a Delaware limited)
12 partnership,)
13 Plaintiff,)
14 vs.)
15 PACIFIC BELL, a California)
corporation; PACIFIC TELESIS)
16 GROUP, a Nevada corporation;) (Related Action: C 96-1691 SBA)
PACIFIC BELL EXTRAS, a)
17 California corporation; and)
PACIFIC BELL COMMUNICATIONS, a)
18 California corporation,)
19 Defendants.)
20

21

22 Defendants Pacific Bell, Pacific Telesis Group, Pacific
23 Bell Extras and Pacific Bell Communications answer the complaint,
24 filed May 7, 1996, by Sprint Communications Company L.P., as
25 follows:

26

27 1. Defendants admit the allegations in paragraphs 1
28 through 4.

Joint Answer of Pacific
to Sprint Complaint

★ ★ ★ ★

2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5, and on that basis, deny those allegations.

3. Defendants admit the allegations in paragraph 6.

4. Defendants admit the allegations in the first and third sentences of paragraph 7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 7, and on that basis, deny those allegations, except Defendants admit that Pacific Bell is a Bell Operating Company and telecommunications carrier, is a local exchange carrier, and is authorized by the California Public Utilities Commission, and provides telecommunications services within its service areas in the State of California.

5. Defendants admit the allegations in paragraph 8, except that Defendants deny that Pacific Bell Extras is engaged in the business of marketing, promoting, and administering promotional awards based on the services of Pacific Telesis Group or Pacific Bell Communications.

6. Defendants admit the allegations in paragraph 9.

★ ★ ★ ★

3 7. Defendants admit the allegations in the first
4 sentence of paragraph 10. Defendants deny the allegations in the
5 second sentence of paragraph 10, except admit that the
6 plaintiff's service to their customers includes processing
7 subsequent to their customers' use of telecommunications
8 services. Defendants admit the allegations in the third sentence
9 of paragraph 10, except deny that the plaintiff calculates "all
10 appropriate charges" according to each customer's service plans.

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11, and on that basis, deny those allegations, except Defendants admit on information and belief that the plaintiff has invested resources in the creation of its billing system.

18 9. Defendants are without knowledge or information
19 sufficient to form a belief as to the truth of the allegations in
20 paragraph 12, and on that basis, deny those allegations.

10. Defendants admit the allegations in paragraph 13, and allege that the consolidated bill alleged therein is also made possible by Pacific Bell billing tariffs authorized by the California Public Utilities Commission, and that, in addition, a lump sum charge appears on customers' bills which incorporates the charges, if any, of the plaintiff.

1 11. Defendants admit the allegations in paragraph 14.
2
3 12. Defendants deny the allegations in the first
4 sentence of paragraph 15, except admit that Defendants perform
5 certain billing and collection functions per the billing
6 agreement alleged therein. Defendants admit the allegations in
7 the second sentence. Defendants deny the allegations in the
8 third and fourth sentences, except admit that Pacific Bell
9 collects Sprint's charges to its customers as a single balance
10 due to Pacific Bell. Defendants deny the allegations in the
11 fifth sentence of paragraph 15.
12
13 13. Defendants deny the allegations in paragraph 16,
14 except admit that Pacific Bell charges Sprint on a monthly basis
15 for the services provided under the billing agreements.
16 Defendants further allege that if the combined monthly billing
17 amounts do not meet a specified annual minimum amount, Pacific
18 Bell charges Sprint the difference between the combined monthly
19 amounts and the specified annual minimum.
20
21 14. Defendants deny the allegations in paragraph 17,
22 except Defendants admit that "Sprint transmits the PRB
23 information to Pacific. Pacific then renders the bill, [and]
24 collects the amount due."
25
26 15. Defendants admit the allegations in paragraph 18.
27
28

1 16. Defendants deny the allegations in paragraph 19,
2 except admit that the information transmitted from Sprint to
3 Pacific Bell is Sprint's confidential and proprietary information
4 to the extent provided in the billing agreements and applicable
5 law. Defendants further allege that the information referred to
6 in the second sentence of paragraph 19 is the proprietary
7 information of the customer.

8
9 17. Defendants are without knowledge or information
10 sufficient to form a belief as to the truth of the allegations in
11 paragraph 20, and on that basis, deny those allegations, except
12 Defendants admit that the billing agreement alleged therein
13 contains provisions governing the treatment of information
14 transmitted from Sprint to Pacific Bell.

15
16 18. Defendants are without knowledge or information
17 sufficient to form a belief as to the truth of the allegations
18 in paragraph 21, and on that basis, deny those allegations.

19
20 19. Defendants admit the allegations in paragraph 22,
21 except Defendants deny that Pacific Bell is "prohibited from
22 disclosing Sprint's proprietary information to third parties"
23 without limitation, and further allege that the billing
24 agreements allow for the disclosure of such information under
25 certain circumstances.

26
27 20. Defendants deny the allegations in paragraph 23,
28 except admit that the billing agreements alleged therein impose

1 certain reciprocal obligations and restrictions regarding the use
2 of proprietary information as defined therein.

3
4 * * * *

5
6 21. Defendants deny the allegations in the first
7 sentence of paragraph 24, except admit that Pacific Bell and
8 Pacific Bell Extras have "conceived, designed, and begun
9 promoting a rewards incentive program." Defendants admit the
10 allegations in the second sentence of paragraph 24, except deny
11 that Pacific Bell administers the program alleged therein, and
12 further admit that Pacific Bell Extras administers the program
13 alleged therein. Defendants admit the allegations in the third
14 sentence of paragraph 24.

15
16 22. Defendants deny the allegations in the first three
17 sentences of paragraph 25, except Defendants admit that Pacific
18 Bell and Pacific Bell Extras "sought to induce customers to
19 enroll in its program through an extensive advertising and
20 promotional campaign including television ads, in both English
21 and Spanish, and direct mail flyers." Defendants further admit
22 that Pacific Bell Extras "has run print ads throughout California
23 including here in the San Francisco Bay Area in the Chronicle
24 newspaper." Defendants further admit that Pacific Bell, on
25 behalf of Pacific Bell Extras, has sent direct mail flyers to
26 Pacific Bell's customers, some of whom may also be the
27 plaintiff's customers. Defendants admit the allegations in the
28 fourth sentence of paragraph 25.

Joint Answer of Pacific
to Sprint Complaint